

AUG 23 1993

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Cable Television)
Consumer Protection and Competition)
Act of 1992)

Rate Regulation)

MM Docket No. 92-266

To: The Commission

OPPOSITION AND MOTION TO STRIKE

Pursuant to Section 1.41 of the Commission's Rules, Liberty Cable Company, Inc. ("Liberty"), by its attorneys, hereby: (i) opposes the "Request For Leave To File In Excess Of Page Limitation" (the "Request") filed by Time Warner Entertainment Company, L.P. ("Time Warner"); and, (ii) moves to strike the Reply of Time Warner to Oppositions to Petitions for Reconsideration ("the Reply"). In support thereof, Liberty states:

1. Time Warner filed the Request simultaneously with the Reply. Section 1.48(b) of the Commission's rules specifically provides that requests to exceed page limitations should be filed no later than two business days after the time for filing oppositions has expired.^{1/} In this case, Time Warner not only missed that filing date, but it also failed to offer anything in mitigation as to why the Request was late filed.

^{1/} See, In re Teleprompter Corp. et al, 51 RR 2d 71, 79 (1982).

2. Time Warner's argument for requesting that the Commission permit it to file a reply in excess of the 10-page limit of Section 1.429(g) of the Rules is that Time Warner "has found that it is unable to adequately address the arguments raised [in the Oppositions] within the page limit of the Commission's Rules."^{2/} Liberty submits that this is an insufficient argument to support the relief requested, particularly in view of the fact that Section 1.48(b) of the Commission's rules prohibits the routine granting of such requests.^{3/} In Teleprompter Corp.,^{4/} the Commission denied a request to exceed page limitations, very similar to the one filed by Time Warner herein,^{5/} finding that it was inadequate.

3. The page limitations are in the Rules to provide the Commission with some means of controlling the amount of paper that it must sift through in order to arrive at an intelligent decision. Now, perhaps more than ever in the Commission's history, the Commission's resources are being stretched beyond the breaking point in an attempt to implement the new Cable Act. Accordingly, now, more than ever before, the Commission should stringently apply

^{2/} See, Page 1 of Request for Leave to File in Excess of Page Limitation filed on August 4, 1993 by Time Warner Entertainment, L.P. in MM Docket No. 92-266.

^{3/} Supra n.1.

^{4/} Id.

^{5/} In Teleprompter, movant urged "...waiver of this rule due to the complexity and number of the issues raised in this proceeding, the length of the Commission's slip opinion ... and the new information which has come to light since the opinion was adopted." Id. at 74.

the policy of Section 1.48(b) of its Rules that: "...requests for permission to file pleadings in excess of the length prescribed by the provisions of this chapter shall not be routinely granted."

4. Not only is Time Warner in blatant disregard of Section 1.48(b) of the Rules by its failure to timely file the Request and of Section 1.429(g) by its failure to adhere to the page limitation, but it is also in blatant disregard of Section 1.429(g) of the Rules by its failure to serve Liberty with a copy of its Reply.^{6/} The only thing that can be said in favor of Time Warner with regard to this additional failure to abide by the Commission's rules is that Time Warner did not intentionally mislead the Commission by including Liberty among those listed in its Certificate of Service.^{7/}

5. Liberty is aware that this document is not timely. In mitigation, Liberty states that the document is not timely because Time Warner failed to serve its pleadings upon Liberty; Liberty was completely unaware of Time Warner's pleadings until it searched for

^{6/} Section 1.429(g) states: "Replies to an opposition...need be served only on the person who filed the opposition." From its Certificate of Service, it appears that Time Warner served every party in the proceeding but Liberty.

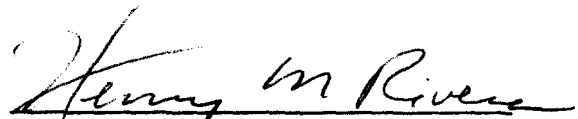
^{7/} Liberty is not surprised that Time Warner failed to serve its Reply on Liberty. This failure is simply another in a sustained pattern of behavior by Time Warner whose design is to make Liberty use its scarce resources in various state and federal regulatory fora instead of using those resources to compete with Time Warner. It is burdensome enough that a small, fledgling competitor to Time Warner like Liberty must spend its scarce human and fiscal resources to participate in FCC rulemakings; it is worse if such a company must spend its scarce resources to retrieve documents from the Commission that, by Commission rules, are supposed to be served on it.

and retrieved them from the Commission's files. This document was prepared and filed as soon as Liberty found the Request and Reply. Liberty submits that not considering this document because it was not timely filed will encourage a lack of compliance with the Commission's service rules. Liberty suggests that this is not the type of conduct the Commission wants to encourage among its licensees and those who practice before the Commission.

For all of the foregoing reasons, Liberty requests that Commission deny the Request and strike the Reply from the record of this proceeding.

Respectfully submitted,

LIBERTY CABLE COMPANY, INC.



Henry M. Rivera

Larry Solomon

GINSBURG, FELDMAN AND BRESS,
Chartered

1250 Connecticut Ave, N.W.

Suite 800

Washington, DC 20554

(202)637-9012

ITS ATTORNEYS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true copies of the foregoing document were sent this 23rd day of August, 1993, by first class United States mail, postage prepaid, to the following:

Philip L. Verveer
Sue D. Blumenfeld
Laurence D. Atlas
1155 21st St. NW
Suite 600
Washington, DC 20036

Aaron I. Fleischman
Charles S. Walsh
Seth A. Davidson
1400 16th St. NW
Washington, DC 20036


BRENDA LANE